

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL NORWOOD,

Plaintiff,

Civil No. 1:CV-01-1005
(Smyser, U.S.M.J.)

v.

DONALD ROMINE,

Defendant.

FILED
HARRISBURG, PA

NOV 28 2003

MARY E. D'ANDREA, CLERK
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PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR A NEW TRIAL
PURSUANT TO FED.R.CIV.P. 59(a)

I. FACTS

The following facts were established at trial:

1. That the plaintiff is a Muslim and a member of the Nation of Islam, and that the plaintiff's belief that he is required to eat halal/kosher foods is sincerely held and religious in nature. (See direct testimony of Michael Norwood).
2. That the plaintiff was provided with a kosher/halal diet while confined at USP Lewisburg from June 23, 1997 through October 31, 2000. (See direct testimony of Michael Norwood).
3. That on October 28, 2000, Abdulfattah Jamiu, a religious services staff member at Lewisburg conducted an interview with the plaintiff and asked the following question: "What are your religious dietary needs?" The plaintiff responded: "Kosher or Halal". (See "Defendant's Exhibit 3").
4. On October 31, 2000, Mr. Jamiu notified the plaintiff

that he was being terminated from participating in the kosher/halal diet program, and that this decision could be appealed through the administrative remedy procedure. (See "Defendant's Exhibit 4 ").

5. That the plaintiff appealed Mr. Jamiu's decision to the defendant. (See "Defendant's Exhibit 8 ").

6. At trial, the defendant testified that he relied on the chaplain department at USP Lewisburg to make decisions regarding Lewisburg's religious diet program. (See direct testimony of Donald Romine).

7. That the plaintiff as well as the Mr. Jamiu and the defendant testified that the plaintiff's placement on the halal/kosher diet would not have affected the orderly running of the prison. (See direct testimony of plaintiff, Mr. Jamiu, and Mr. Romine).

8. That defendant Romine, upon receipt of the administrative remedy from the plaintiff complaining of being removed from the kosher/halal diet, failed to remedy the wrong. (See "Defendant's Exhibit 8 ").

9. That the plaintiff was reinstated on the kosher/halal diet after he filed his amended civil complaint. (See direct testimony of plaintiff).

II. LEGAL ARGUMENT


Clearly, the evidence against defendant Romine based on a theory of "supervisory liability" was overwhelming. See Roebuck v. Drexel University, 852 F2d. 715, 735 (3d. Cir. 1988) (new trial ordered under Rule 59(a) where verdict was against the weight of evidence) and Shanno v. Magee Indus. Enterprises, Inc., 856 F2d. 562, 568 (3d. Cir. 1988) (new trial ordered under Rule 59(a) where evidence was "decidedly" in favor of moving party).

The plaintiff's proofs at trial were literally uncontested by the defendant. (See defendant's closing argument). The defendant's defense was that he reasonably relied upon Mr. Jamiu and the religious services department at USP Lewisburg to make the determination to remove the plaintiff from the kosher/halal diet. In a pretrial ruling in this case, the Court determined that such a defense would not excuse the defendant from liability. (See Court's Memorandum denying defendant's motion for summary judgment, filed February 12, 2002). The plaintiff respectfully submits that it would be a miscarriage of justice to allow the jury's verdict to stand where it is based on a defense that this Court has previously determined was legally unavailable to the defendant. See Shanno, Id. at 567-68).

CONCLUSION

The plaintiff's motion for a new trial should be granted.

Respectfully submitted,


MICHAEL NORWOOD, Pro Se
#06970-014
P.O. Box 1000
Lewisburg, PA 17837

Dated: November 21, 2003

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Brief in Support of Motion for a New Trial Pursuant to Fed.R. Civ. P. 59(a) has been served upon Joseph J. Terz, AUSA, 228 Walnut Street, Suite 220, Harrisburg, PA 17108 (counsel for defendant Romine), by placing same in a postage prepaid envelope and by inserting same in a U.S. Mail box this 21st day of November, 2003.


MICHAEL NORWOOD

Inmate Name: Mr. Michael Norwood
Register Number: 06970-014

United States Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

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